IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12067 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NIPIN BAGLA

Versus

DEAN FACULTY

Appearance:

MR MUKUL SINHA for Petitioners

MR MITUL K SHELAT for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

Mr. K.P. Rawal,GOVERNMENT PLEADER for Respondent No. 3

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 29/03/2001

CAV JUDGEMENT

1. The controversy involved in the present case is in respect of admission in P.G. Degree Course in

Radiology. Three petitioners were appointed by the Government in the post of Tutor in the subject of Radiology in April 2000. One of the conditions for such appointment is that the petitioners should register in P.G. Degree course in Radiology within three months from the date of their appointment. According to the conditions of appointment the petitioners applied for registration for admission to P.G. degree course in Radiology in prescribed form. As per procedure the Prof. & Head of the Department of Radiology of Baroda Medical College has forwarded the same to the University for consideration. Dr. Chandwani of the Baroda University refused to forward the same to the University and therefore the petitioners approached this Court for a direction by preferring Special Civil Application No. 8172 of 2000 and this Court directed the authority to forward the petition of the petitioners to the University for considering their applications for P.G. Course in Radiology. Thereafter, the Dean forwarded applications of the petitioners on 6-7-2000. In pursuance of the aforesaid direction of the Court a meeting was held by the members of the Committee to consider admission of the petitioners in the said P.G. Course in Radiology. In the meeting the members considered applications of the petitioners but refused to admit them. The Dean was accordingly informed by the Registrar about the order dated 23-10-2000 vide his letter dated 25-10-2000, on the ground that the applications were not submitted to the proper authority and same were not in time, however the petitioners were given an opportunity to apply again at the next selection meeting to the proper authority through the Dean of the department. It is said by the University that the selection will be made as per rules on considering (1) availability of teacher, (2) merit , (3) MCI recommendation and (4) category. Having felt aggrieved by the decision of the University the petitioners again approached this Court for a direction on the respondents to register the petitioners in P.G. Course in the subject of Radiology at Baroda Medical College. The respondent No.3 has filed counter affidavit, wherein allegations of the petitioners have been denied. It is stated that as per direction of this Court's order dated 27-9-2000, the Dean had forwarded the applications of the petitioners, but the University after considering applications of the petitioners refused to admit in P.G. Degree course in Radiology. It is further stated that the admission in P.G. course is not automatic and admission cannot be granted solely on the ground that the petitioners were appointed as tutors in Radiology by the Government. It is further stated that, the petitioners could not be considered for P.G.

Graduation degree registration for want of Post Graduate teachers in light of the guidelines of the Medical Council of India. It is also submitted that, in the Department of Radiology there are two recognised PG teachers, viz. Dr. Prof. M.K. Vadel and Dr. S.D. Shah. On the basis of the present strength of the recognized teachers, as per Medical Council of India (MCI) only two students can be admitted in the Department of Radiology for P.G. Degree. The respondent has also enclosed a list of teaching staff in the College. It is further stated that the admission has already been granted to four candidates for P.G. Degree in Radiology, selected as Residents by College Council. It is also stated that, students are admitted only on the basis of merits and selection is made by the college council in accordance with Residency Rules of the Govt. of Gujarat. It is also stated that regarding existing strength of qualified PG teachers, it is not possible to admit three petitioners in P.G. Degree course in Radiology.

2. The University has also submitted separate reply wherein they have denied the contentions made by the petitioners. It is stated that the admission is regulated by the University and according to the rules of Residency for the University the students can be admitted on the basis of merits only. It is also submitted that as per Resolution of the Health and Family Welfare Department, Government of Gujarat dated 5-12-1989 and 24-2-2000 the Dean of the Medical College (Administration) carries out appointment of Resident-Clinical and Non-Clinical residents and admission in P.G. course and Diploma course twice a year during January/February and July/August. It is also submitted that, as per Rule 6 (a) of the Tutor, G.S.S. Class-II in Government Medical Colleges and attached Medical Institutes Recruitment Rules, 1992, a medical candidate who is appointed as tutor shall have to obtain registration for post graduation in the subject in which he or she has been appointed. It is further submitted that, the petitioners did not apply for registration when they were residents and P.G. Diploma seats were advertised on 29-6-2000. It is also submitted that same question was raised in case of Jasmin S. Shah vs. Post Graduate Director and this Court rendered its decision that if a candidate did not apply within time such candidate cannot be admitted. It is further submitted that according to Residency Rules and M.S. University Rules, admissions are to be given only in accordance with merit. It is also stated that the Tutors are appointed by Government but admission in P.G. Course is done by the University in accordance with merit of the candidate.

It is also stated that a candidate should obtain registration for Post Graduation and admission to the P.G. course is in no way connected with the appointment as Tutor. It is also stated that the petition is devoid of any merit and accordingly the petition deserves to be dismissed.

3. Dr. Mukul Sinha, learned counsel appearing on behalf of the petitioners submitted that the order dated 23-2-2000 rejecting application of the petitioners in P.G. Degree course in Radiology is ab initio illegal. It is also submitted that the reasons for rejecting applications of the petitioners also is not convincing. It is also submitted by Dr. Sinha that the application forms of the petitioners were in conformity with the rules and there is no reason for the University to reject the same. It is also submitted by Dr. Sinha that, according to the terms of appointment the petitioners are to get themselves registered in P.G. Degree course within three months from the date of order. The delay on the part of the petitioners to get themselves registered will make their appointments cancelled, therefore the University is under an obligation to register the petitioners in P.G. Course in Radiology. It is also submitted by Dr. Sinha that, it is not true that the vacancy would not be available in P.G. Degree course in Radiology. It is submitted that in the month of June 2000 in the faculty of Radiology two general seats were available. It is therefore submitted that shortage of teachers is not a correct statement by the University and therefore petitioners are entitled to be admitted in P.G. Degree Course. It is also submitted by Dr. Sinha that in pursuance of their appointment as tutors they are entitled to be registered in P.G. Course in radiology.

4. Mr. Mitul Shelat, learned counsel appearing for respondent University submitted that there is no nexus between the appointment of tutors and registration in P.G. Course in the University. It is also submitted by Mr. Shelat that, there is no quota reserved by the Government for sponsoring serving tutors for admission in P.G. Degree course. It is also submitted that, as per rules of admission the University decides the applications on merits and accordingly the admissions are granted by the University. It is submitted by Mr. Shelat that, advertisement was issued by the University on 29-6-2000 for admission in P.G. Degree course but no application were filed by the petitioners for admission to the said course. It is also submitted that in pursuance of the advertisement University had already granted admission for four candidates on merits in P.G.

Degree course in Radiology and therefore, according to the staff strength there is no scope for additional admission in P.G. Degree course in Radiology. Mr. Shelat has also drawn my attention to the conditions imposed by Medical Council of India. From the conditions it appears that the teachers strength is indicated by the Dean of the University. It appears that there are two Deans as head of the department in Radiology in Baroda Medical College and according to the Medical Council of India's norms four candidates have already been admitted by the University, and therefore, there is no scope for creation of additional seats as the same will be violative of the instructions of Medical Council of India. From the counter affidavit filed by the Dean of the University it is evident that, at present there is no vacancy for admission in P.G. Degree course in Radiology as the four seats available have been already filled in long ago. After hearing learned counsel of the parties and after examining rules for admission and other papers placed in the file and also going through the counter affidavit filed by the respondents; I am of the view that, there is no merit in this writ petition. It is incorrect to say that because of the adamant attitude of the respondents the petitioners could not get registration in P.G. Course in Radiology. It appears that the petitioners were appointed as tutors in Radiology on 5-4-2000. There was condition in the appointment order that the selected candidate shall have to give an undertaking for P.G. Course registration in the concerned subject. Without giving this undertaking a candidate is not permitted to take over charge as tutor. Three months time were given to the petitioners for getting themselves registered in P.G. course. As per terms of appointment the appointed candidate was required to obtain registration within three months from the date of joining as tutor, which the petitioner could not get. There are two bodies, one is the State Government and the other is the University. State Government may put certain norms and conditions in appointment but the admission is to be given by the University according to the prevalent rules. The norms normally lays down that admission is to be given to a candidate only on merit. There can be no registration or admission for P.G. course unless vacancies are available. From the counter affidavit of the University it is clear that as against two Professors & Head of Department, four candidates have already been admitted according to Medical Council of India norms. At present there is no quota to admit or register any additional candidate. However the university indicated in the counter affidavit that petitioners may apply afresh for registration in P.G.

Course in Radiology during next course. From Annexure-III of the counter affidavit of Dean it is clear that two recognised P.G. teachers in Radiology has already enrolled four candidates for registration in P.G. degree course in Radiology and accordingly they have already been admitted. In view of the directions of Medical Council of India I am of the view that, as there are two recognised teachers, there is no scope to admit additional candidate for P.G. Degree course in Radiology. The admission for P.G. course in Radiology has already been closed long back in July 2000 and therefore at present there is no scope to admit any additional candidate in the academic sessions 2000-2001. From the application form of the petitioners it appears that the petitioners filled up their applications on 19-8-2000 that is long after the admissions were closed for P.G. Course in Radiology. Therefore I am of the view that the petitioners did not apply within the prescribed time and when they applied for the course, the admissions were closed long back. On that ground also the University cannot be directed to consider the applications of the petitioners for admission in P.G. Course in Radiology for academic sessions 2000-2001. From the foregoing discussions it is clear that the petitioners did not apply for registration in time and they have not forwarded their application as per rules and therefore no direction can be given to the University to admit the petitioners for P.G. Degree Course in Radiology during academic sessions 2000-2001. Under the facts & circumstances stated above, it is a fit case to accept the contentions of the respondents that the action of the respondents are not arbitrary or contrary to the rules of the University or in violation of the rules & regulations for admission of candidates in P.G. Degree Course. There is no merit in the petition and it is accordingly dismissed. Interim relief if any granted stands vacated. Rule discharged. However, I make no order as to costs.

Dt: 29-3-2001 (P.K. Sarkar, J)

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